

2005-06 HONOLULU CHARTER COMMISSION
CHARTER AMENDMENT PROPOSAL FORM

1. Provide a brief description of the purpose of the proposed charter amendment; include a description of the problem the proposal would address and how the proposal would address the problem:

As a housekeeping matter, propose a charter amendment to delete the reference to Section 6-103 entitled "Civil Defense Agency," in Section 4-104.1 entitled "Appointment, Confirmation and Removal of Officers and Employees."

Charter Section 4-104.1 includes Council confirmation for the position of Civil Defense Administrator described in Section 6-103. The position of Civil Defense Administrator is a civil service position, and Council confirmation of the appointment of an individual to a civil service position is inconsistent with the civil service law. Further, Section 4-104.1 provides that "all department heads" shall be nominated and, by the advice and consent of Council, appointed by the Mayor. The Civil Defense Agency is not a department under the Charter and the agency head is, therefore, not a department head.

The position of Civil Defense Administrator is a civil service position, confirmed as such following extensive litigation and court decisions in Malcolm A. Sussel v. City and County of Honolulu, U.S. District Court, Civil Nos. 86-1136 and 88-00375, affirmed by the U.S. Court of Appeals (Ninth Circuit) May 9, 1991; Malcolm A. Sussel v. City and County of Honolulu Civil Service Commission, 71 Haw. 101, 784 P.2d 867 (1989); Malcolm A. Sussel v. Civil Service Commission of the City and County of Honolulu, 74 Haw. 599, 851 P.2d 311 (1993). The existing language of the Charter in Section 6-103, provides for the Mayor's appointment of the Civil Defense Administrator "in accordance with law" which, following the various court decisions on the issue, is established to mean in accordance with the civil service law.

2. If applicable, list the charter provision(s) proposed to be deleted or amended:

Section 4-104.1 is to be amended.

3. If the proposal is based on a provision or provisions in the charter or law of another jurisdiction, name the jurisdiction and, if possible, attach a copy of the relevant provision(s).

N/A

4. If the proposal is based on any written materials you have, please attach a copy with a citation to its source.

N/A

5. Attach the text of the proposed charter amendment in Ramseyer format (see below).

Ramseyer Format:

If proposing an amendment to existing Charter provisions, indicate, by underscoring, any language being proposed to be added to the Charter and indicate, by bracketing, any language being proposed to be deleted from the Charter.

If proposing to replace existing Charter provisions in their entirety, clearly indicate the article(s), chapter(s) and/or section(s) of the Charter proposed to be deleted, and provide the text of any provisions proposed to replace the deleted material.

If proposing new Charter material only, provide the text of the new provision(s) and, if possible, indicate where in the Charter the new material should be inserted.

Section 4-104. Appointment, Confirmation and Removal of Officers and Employees --

1. All department heads and the managing director, as provided in Sections 5-201, 6-101, [6-103,] 6-105, 6-201, 6-301, 6-501, 6-601, 6-701, 6-801, 6-901, 6-1101, 6-1201, 6-1301, 6-1401, 6-1501, and 6-1701, shall be nominated and, by and with the advice and consent of the council, appointed and may be removed by the mayor, except as otherwise provided by this charter. Department heads shall be duly registered voters of the city and qualifications of department heads shall be as required by this charter.

2. When the position of head of an executive agency becomes vacant and the mayor is the appointing authority, the mayor may temporarily fill the vacancy by granting a commission allowing the nominee to fulfill the responsibilities of the position. The commission shall begin when the mayor submits to the council a request for confirmation. The commission shall expire when the council makes the confirmation decision. If the nominee fails to be confirmed by the council, the nominee shall not be eligible for another interim appointment to the same office.

3. Department heads may appoint the necessary staff for which appropriations have been made by the council.

4. No appointing authority shall appoint any person to any office or position exempted from civil service until satisfied by proper investigation that the person to be appointed is fully qualified by experience and ability to perform the duties of the person's office or position.